

SENATE BILL 2273

By Fowler

AN ACT to amend Tennessee Code Annotated, Title 29, Chapter 34, to enact the "Drug Dealer Liability Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, is amended by adding the following new part 3:

Section 29-34-301. This part shall be known and may be cited as the "Drug Dealer Liability Act of 1998".

Section 29-34-302. The purpose of this part is to provide a civil remedy for damages to persons in a community injured as a result of the use of an illegal controlled substance. These persons include parents, employers, insurers, governmental entities, and others who pay for drug treatment or employee assistance programs, as well as infants injured as a result of exposure to controlled substances in utero ("drug babies"). This part will enable them to recover damages from those persons in the community who have joined the marketing of illegal controlled substances. A further purpose of this part is to shift, to the extent possible, the cost of the damage caused by the existence of the market for illegal controlled substances in a community to those who illegally profit from that market. The further purpose of this part is to establish the prospect of substantial monetary loss as a deterrent to those who have not yet entered into the distribution market for illegal controlled substances. The further purpose is to establish an incentive for users of illegal controlled substances to identify and seek payment for their own

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treatment from those dealers who have sold illegal controlled substances to the user in the past.

Section 29-34-303. The general assembly declares all of the following:

(a) Although the criminal justice system is an important weapon against the marketing of illegal controlled substances, the civil justice system can and must also be used. The civil justice system can provide an avenue of compensation for those who have suffered harm as a result of the marketing and distribution of illegal controlled substances. The persons who have joined the marketing of illegal controlled substances should bear the cost of the harm caused by the market in the community.

(b) The threat of liability under this part serves as an additional deterrent to a recognizable segment of the network for illegal controlled substances. A person who has assets unrelated to the sale of illegal controlled substances, who markets illegal controlled substances at the workplace, who encourages friends to become users, among others, is more likely to decide that the added cost of entering the market is not worth the benefit. This is particularly true for a first-time, casual dealer who has not yet made substantial profits. This part provides a mechanism for the cost of the injury caused by illegal drug use to be borne by those who benefit from illegal drug dealing.

(c) This part imposes liability against all participants in the marketing of illegal controlled substances, including small dealers, particularly those in the workplace, who are not usually the focus of criminal investigations. The small dealers increase the number of users and are the people who become large dealers. These small dealers are most likely to be deterred by the threat of liability.

Section 29-34-304. As used in this part, unless the context otherwise requires:

(a) "Market" means to engage in conduct which is a violation of Tennessee Code Annotated, Section 39-17-417(a) with respect to an illegal controlled substance. Marketing does not include conduct by a law enforcement officer or agency, the state, or a person acting at the direction of a law enforcement officer or agency of the state if the conduct is in furtherance of an official investigation.

(b) "Individual user" means the individual whose use of an illegal controlled substance is the basis of an action brought under this part.

(c) "Person" means an individual, governmental entity, corporation, firm, trust, partnership, or incorporated or unincorporated association, existing under or authorized by the laws of this state, another state, or a foreign country.

(d) "Period of illegal use" means, in relation to the individual user, the time from the individual's first illegal use of an illegal controlled substance to the accrual of the cause of action.

(e) "Place of illegal activity" means, in relation to the individual user, each county in which the individual illegally purchases an illegal controlled substance during the period of illegal use.

(f) "Place of participation" means, in relation to a defendant in an action brought under this part, each county in which the person markets an illegal controlled substance during the period of illegal use.

(g) "Illegal controlled substance" means cocaine, phencyclidine, heroin, or methamphetamine and any other illegal controlled substance the manufacture, cultivation, importation into this state, transportation, possession for sale, sale, furnishing, administering, or giving away of which is a violation of Tennessee Code Annotated, Title 39, Chapter 17, Part 4.

Section 29-34-305.

(a) A person who knowingly markets illegal controlled substances within this state is liable for civil damages as provided in this part. A person may recover damages under this part for injury resulting from an individual's use of an illegal controlled substance.

Section 29-34-306.

(a) Any one (1) or more of the following persons may bring an action for damages caused by an individual's use of an illegal controlled substance:

(1) A parent, legal guardian, child, spouse, or sibling of the individual user.

(2) An individual who was exposed to an illegal controlled substance in utero.

(3) An employer of the individual user.

(4) A medical facility, insurer, employer, or other nongovernmental entity that funded a drug treatment program or employee assistance program for the individual user or that otherwise expended money on behalf of the individual user. No public agency other than a health care institution as defined in Tennessee Code Annotated, Section 68-11-102 shall have a cause of action under this part.

(5) A person injured as a result of the intentional, reckless, or negligent actions of the individual user.

(b) A person entitled to bring an action under this section may seek damages from one (1) or more of the following:

(1) A person who sold, administered, or delivered the illegal controlled substance to the individual user that was the proximate cause of the damages for which recovery is sought.

(2) A person who knowingly markets an illegal controlled substance, if all of the following apply:

(A) The place of illegal activity is within a place of participation by the defendant.

(B) During the period of illegal use:

(i) the defendant marketed the same type of illegal controlled substance used by the individual user that is the proximate cause of the damages for which recovery is sought; or

(ii) The defendant has been convicted of a criminal offense relating to or involving that same type of illegal controlled substance used by the individual user that is the proximate cause of the damages for which recovery is sought and the underlying offense for the conviction occurred in the place of illegal activity.

(c) A person entitled to bring an action under this section may recover all of the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the use of the illegal controlled substance that is the basis for action.

(2) Noneconomic damages, including, but not limited to, physical and emotional pain, suffering, physical impairment, emotional distress, medical anguish, disfigurement, loss of enjoyment, loss of

companionship, services and consortium, and other nonpecuniary losses proximately caused by the use of the illegal controlled substance that is the basis for the action.

(3) Exemplary damages.

(4) Reasonable attorney fees.

(5) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 29-34-307.

(a) An individual user may bring an action for damages proximately caused by the use of an illegal controlled substance only if all of the following conditions are met:

(1) The individual personally discloses to law enforcement authorities all of the information known to the individual regarding all that individual's sources of illegal controlled substances;

(2) The individual has not used an illegal controlled substance within the thirty (30) days preceding the filing of the action; and

(3) The individual continues to remain free of the use of an illegal controlled substance throughout the pendency of the action. If the court finds that the individual user does not remain or has not remained free of the use of illegal controlled substances during the pendency of the action, then the action shall be dismissed promptly, with prejudice.

(b) For the purposes of the preceding subsection, the complaint shall be verified and shall have appended to it a urinalysis of the defendant for detection of controlled substances from a laboratory, made within ten (10) days of the filing of the complaint, showing no traces of any illegal controlled substances. A defendant shall have the right to demand, up twenty-four (24) hours written

notice and at defendant's expense, a urinalysis of the defendant from time to time during the pendency of the action, but not more often than once every three (3) months.

(c) A person entitled to bring an action under this section may seek damages only from a person who marketed in the place of illegal activity and during the period of illegal use, or marketed the illegal controlled substance that proximately caused the damages to the individual user.

(d) A person entitled to bring an action under this section may recover only the following damages:

(1) Economic damages, including, but not limited to, the cost of treatment, rehabilitation and medical expenses, loss of economic or educational potential, losses proximately caused by decreases in productivity or increases in absenteeism, losses proximately caused by accidents or injury, and any other pecuniary loss proximately caused by the use of the illegal controlled substance at issue.

(2) Reasonable attorney fees.

(3) Costs of suit, including, but not limited to, reasonable expenses for expert testimony.

Section 29-34-308.

(a) A third party shall not pay damages awarded under this part, or provide a defense or money for a defense, on behalf of an insured under a contract of insurance or indemnification.

(b) A cause of action authorized pursuant to this part may not be assigned, either expressly, by subrogation, or by any other means, directly or indirectly, to any public or publicly funded agency or institution.

Section 29-34-309.

(a) An action by an individual user of an illegal controlled substance for damages arising out of an incident involving a third party (whether or not a party to the action under this part), is governed by the principles of comparative fault. Comparative fault attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of fault attributed to the plaintiff.

(b) The burden of proving the comparative fault of the plaintiff is on the defendant, which shall be shown by a preponderance of the evidence.

(c) Comparative fault shall not be attributed to a plaintiff who is not an individual user of a controlled substance, unless that plaintiff knowingly gave the individual user money specifically for the purchase of the illegal controlled substance or, if the plaintiff is an employee, knowingly permitted the individual user to work while under the influence of an illegal controlled substance.

(d) Comparative fault shall not be attributed to a plaintiff who is the individual user of a controlled substance if the damages do not arise out of an incident involving a third party (whether or not a party to the action under this part).

Section 29-34-310.

(a) A person subject to liability under this part has a right of action for contribution against another person subject to liability under this part. Contribution may be enforced either in the original action or by a separate action brought for that purpose. A plaintiff may seek recovery in accordance with this part and other laws against a person whom a defendant has asserted a right of contribution.

Section 29-34-311.

A person against whom recovery is sought who was convicted of a violation of Tennessee Code Annotated, Section 39-17-417(a) or of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513, 84 Stats. 1236, codified at 21 U.S.C. Sec. 801 et seq.) during the period of illegal use involving the illegal controlled substance at issue is estopped from denying that he or she marketed that illegal controlled substance in the place in which conviction occurred. This subpart does not affect the plaintiff's burden of proving the other elements of the cause of action.

Section 29-34-312.

(a) A plaintiff under this part may request an ex parte prejudgment attachment order from the court against all assets of a defendant sufficient to satisfy a potential award.

(b) The Tennessee Rules of Civil Procedure shall apply to any request under this section.

Section 29-34-313.

(a) A claim under this part shall not be brought more than one (1) year after of the cause of action accrues.

(b) A cause of action accrues under this part when a person who may recover has reason to know of the harm from use of an illegal controlled substance that is the basis for the cause of action and has reason to know that the use of that illegal controlled substance is the cause of the harm; or until one (1) year after the individual potential defendant is convicted of a criminal offense involving the illegal controlled substance that is the basis for the cause of action, whichever period is longer.

Section 29-34-314.

On motion by a governmental agency involved in an investigation or prosecution involving an illegal controlled substance, an action brought under this part shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of execution.

Section 29-34-315.

No cause of action shall arise based on any act by a defendant which occurred prior to the effective date of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 1998, the public welfare requiring it and shall apply to all causes of action arising on or after such date.